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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

8 Jonathan Michael Ploof, ) No. CV 09-1538-PHX-DGC

9 )

10 Petitioner, )

11 vs. ) **ORDER**

12 Charles Ryan, et al., )

13 Respondents. )

14 On February 10, 2011, this Court denied Jonathan Michael Ploof's petition for habeas

15 corpus relief. Doc. 22. On February 12, Petitioner moved for a certificate of appealability.

16 Doc. 24. For reasons that follow, the Court will deny the motion.

17 Rule 22(b) of the Federal Rules of Appellate Procedure, as amended by the

18 Antiterrorism and Effective Death Penalty Act of 1996, provides that if a petitioner files a

19 notice of appeal, the district judge who rendered the judgment in question shall either issue

20 a certificate of appealability or state why such a certificate should not issue. A certificate

21 may issue "only if the applicant has made a substantial showing of the denial of a

22 constitutional right." 28 U.S.C. § 2253(c)(2); *see Jennings v. Woodford*, 290 F.3d 1006,

23 1010 (9th Cir. 2002). In the certificate, the district court must indicate which specific issues

24 satisfy this showing. 28 U.S.C. § 2253(c)(3); *see Jennings*, 290 F.3d at 1010. "[C]ertificates

25 of appealability are to be granted on an issue-by-issue basis[.]" *Hiivala v. Wood*, 195 F.3d

26 1098, 1103 (9th Cir. 1999). Only issues specified in the certificate of appealability may be

27 considered on appeal. *See Hiivala*, 195 F.3d at 1102.

28 When the district court rejects a constitutional claim on the merits, "[t]he petitioner

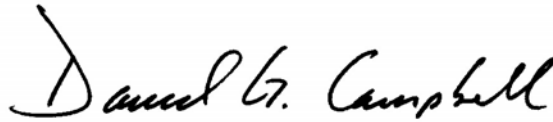
1 must demonstrate that reasonable jurists would find the district court's assessment of the  
2 constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see*  
3 *Silva v. Woodford*, 279 F.3d 825, 832 (9th Cir. 2002). When the district court rejects a claim  
4 on procedural grounds, a petitioner must show that "jurists of reason would find it debatable  
5 whether the petition states a valid claim of the denial of a constitutional right and that jurists  
6 of reason would find it debatable whether the district court was correct in its procedural  
7 ruling." *Slack*, 529 U.S. at 484; *see Petrocelli v. Angelone*, 248 F.3d 877, 883-84 (9th Cir.  
8 2001). "[T]he showing a petitioner must make to be heard on appeal is less than that to  
9 obtain relief[.]" and any doubts about whether a petitioner has satisfied the "jurists of reason  
10 would find it debatable" standard are resolved in the petitioner's favor. *Lambright v.*  
11 *Stewart*, 220 F.3d 1022, 1025, 1025 n.4 (9th Cir. 2000).

12       Petitioner urges that he has made a "substantial showing of the denial of a  
13 constitutional right" through the mere fact that he made objections to some of the legal and  
14 factual conclusions in the magistrate judge's Report and Recommendation ("R&R") and the  
15 Court denied relief on all seven claims after reviewing five of the claims *de novo*. *See* Doc.  
16 24 at 2. Petitioner contends that he is, therefore, entitled to a certificate as to all claims. *Id.*  
17 Petitioner's argument is superficial and unpersuasive. The Court's February 10 order  
18 denying relief held that Petitioner did not make specific objections on Claims 4 and 5, and  
19 the Court therefore adopted the R&R's findings and recommendations as to those claims  
20 without review. Doc. 22 at 12. As to the five claims the Court reviewed *de novo*, the law  
21 requires *de novo* review on R&R findings and recommendations to which a petitioner  
22 specifically objects. *Id.* at 2 (citing § 636(b)(1)(C), Fed. R. Civ. P. 72(b), and *United States*  
23 *v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)). Where Petitioner makes specific  
24 objections, *de novo* review does not necessarily imply that the objections are meritorious –  
25 and Petitioner points to nothing in this Court's order that indicates otherwise. For reasons  
26 stated in the order, the Court concludes that Petitioner's claims are not meritorious and  
27 do not satisfy the reasonable jurist standard. Petitioner has not made a substantial showing  
28 of the denial of a constitutional right, and therefore the Court will deny the motion for a

1 certificate of appealability.

2 **IT IS ORDERED:** Petitioner's motion for a certificate of appealability (Doc. 24) is  
3 **denied.**

4 DATED this 22nd day of February, 2011.

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David G. Campbell  
United States District Judge  
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